

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NATHAN WENBERG,

No. C 13-01951 SBA (PR)

Plaintiff,

v.

CORRECTIONAL OFFICER DEVEAR,
et al.,

Defendants.

**ORDER RE-SERVING DEFENDANT
CASUSFLA/CASELCH; GRANTING
PLAINTIFF A SECOND EXTENSION
OF TIME TO PROVIDE REQUIRED
INFORMATION NECESSARY TO
LOCATE DEFENDANTS DEVEAR
AND CASUSFLA/ CASELCH; AND
ADDRESSING REMAINING
PENDING MOTION**

Plaintiff, a state prisoner, filed the present pro se prisoner action pursuant to 42 U.S.C. § 1983. The Court previously reviewed the complaint and issued an Order of Service. The Court was advised that service was ineffective as to Defendants SVSP Correctional Officer Devar and Registered Nurse Ronald Casusfla. As such, on June 26, 2014, the Court ordered Plaintiff to provide it with the required information necessary to locate each of these Defendants. Dkt. 44. He was also informed that the failure to do so would result in the dismissal of all claims against these Defendants.

On June 30, 2014, Plaintiff filed a document entitled, "Request for Court Order Requiring Salinas Valley State Prison to Give Plaintiff the Correct Information and Correct Names of the Defendants." Dkt. 45. In that filing, Plaintiff has attached a Health Care Services Request Form, which contains that printed name of Defendant Casusfla or "Caselch."¹ (Dkt. 45 at 4.) The Court notes that the printed name on this form is difficult to decipher; however, it should nonetheless assist the SVSP Litigation Coordinator in locating Defendant Casusfla/Caselch. Therefore, the Court directs the Clerk of the Court to re-serve Defendant Casusfla/Caselch and to attach the aforementioned form, as directed below.

In addition, Plaintiff attached another form entitled, "Inmate/Parolee Request for Interview, Item or Service." (Dkt. 45 at 6.) In the document, under "Supervisor's Review,"

¹ In an attempt to decipher Defendant Casusfla's handwriting, Plaintiff suggests "Caselch" as a possible last name for this Defendant. Dkt. 45 at 1.

1 it is noted that SVSP "do[es] not have [a] correctional officer named Devear in [its] records."
2 (Id.) Because SVSP prison officials have informed Plaintiff that there is no Defendant
3 Devear who works there, this Court finds that it would be futile to re-serve Defendant Devear
4 again until Plaintiff has provided this Defendant's first name or the correct spelling of his/her
5 last name. In addition, the Court cannot assist Plaintiff in conducting discovery by ordering
6 SVSP prison officials to provide the correct names of these unserved Defendants. Therefore,
7 the Court DENIES Plaintiff's "Request for Court Order Requiring Salinas Valley State
8 Prison to Give Plaintiff the Correct Information and Correct Names of the Defendants." Dkt.
9 45.

10 Although a plaintiff who is incarcerated and proceeding *in forma pauperis* may rely
11 on service by the Marshal, such plaintiff "may not remain silent and do nothing to effectuate
12 such service"; rather, "[a]t a minimum, a plaintiff should request service upon the appropriate
13 defendant and attempt to remedy any apparent defects of which [he] has knowledge."
14 Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987). Here, Plaintiff's complaint has
15 been pending for over 120 days, and thus, absent a showing of "good cause," his claims
16 against Defendants Devear and Casusfla/Caselch are subject to dismissal without prejudice.
17 See Fed. R. Civ. P. 4(m). Plaintiff is directed to provide the Court with the first name of
18 Defendant Devear and the correct last name of Defendant Casusfla/Caselch. Plaintiff should
19 review the federal discovery rules, Rules 26-37 of the Federal Rules of Civil Procedure, for
20 guidance about how to obtain the required information necessary to locate these Defendants.
21 Plaintiff has already been given a previous extension of time to do so; however, he has since
22 filed a request for a second extension of time to provide the Court with the required
23 information necessary to locate these Defendants. Dkt. 46. Having read and considered
24 Plaintiff's request, and good cause appearing, his request for a second extension of time is
25 GRANTED, as directed below.

26 CONCLUSION

27 For the foregoing reasons, the Court orders as follows:
28

1. Plaintiff's "Request for Court Order Requiring Salinas Valley State Prison to Give Plaintiff the Correct Information and Correct Names of the Defendants" is DENIED. (Dkt. 45.)